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6 **UNITED STATES BANKRUPTCY COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
8 **SACRAMENTO DIVISION**
9

10 In re) Case No. 11-49288-E-13
11 LYUDMILA KISHCHENKO,)
12 Debtor(s) .)
13 _____)

14 **This memorandum decision is not approved for publication and may**
15 **not be cited except when relevant under the doctrine of law of the**
16 **case or the rules of claim preclusion or issue preclusion.**

17 **MEMORANDUM OPINION AND DECISION**

18 Liliya Walsh has filed a Motion for relief from the automatic
19 stay pursuant to Local Bankruptcy Rule 9014-1(f)(2). The original
20 Proof of Service states that the Motion and supporting pleadings
21 were served on the Chapter 13 Trustee and Office of the United
22 States Trustee on December 23, 2011. By the court's calculation,
23 18 days' notice was provided. Fourteen days' notice is required.
24 However, the Proof of Service filed indicates that the Motion was
25 sent to "Andrey Kishchenko." (Dkt. 17). Mr. Kishchenko is the
26 Debtor's husband and commenced his own Chapter 13 case in November
27 2011, in which Movant filed a motion for relief from the automatic
28 stay.

1 Movant appeared at the January 10, 2012, hearing and presented
2 the court with a proof of service attesting to service of the
3 pleadings on the Debtor. The Proof of Service was filed on
4 January 10, 2012. (Dkt. 24). Proper notice and service has been
5 provided.

6 The hearing was continued to January 17, 2012, at 10:30 a.m.,
7 at which time both the Movant and Debtor appeared. The court
8 conducted the hearing and issues this Decision on the Motion.

9 **MOTION FOR RELIEF FROM STAY**

10 Movant seeks relief from the automatic stay to allow her to
11 proceed with obtaining possession of real property commonly known
12 as 2201 Raintree Court, Rocklin, California. It is alleged that
13 Movant rented the property to the Debtor and her husband, Andrey
14 Kishchenko. When the rental relationship came to an end, Movant
15 served several three-day notices to vacate the property. When the
16 Debtor and Andrey Kishchenko did not vacate, Movant commenced an
17 unlawful detainer proceeding in state court. Trial in the unlawful
18 detainer action was scheduled for November 28, 2011, but was stayed
19 by Andrey Kishchenko when he filed a Chapter 13 bankruptcy case.
20 That Chapter 13 case was dismissed on December 5, 2011.

21 The unlawful detainer trial was rescheduled for December 23,
22 2011. That trial was stayed by the Debtor commencing the instant
23 Chapter 13 case. It is alleged that the Debtor and her husband
24 have filed a series of bankruptcy cases solely for the purpose of
25 disrupting the state court unlawful detainer process, without any
26 intention to engage in a good faith Chapter 13 reorganization.

27 Movant further asserts that her family is suffering a
28 significant hardship by the Debtor and Andrey Kishchenko failing to

1 return possession of the property to Movant. Rent has not been
2 paid, while Movant continues to have the expenses for the property.
3 No payment of rent has been made for the months of September,
4 October, and November 2011. More significantly, Movant's family
5 needs to use the 2201 Raintree Court, Rocklin, California property
6 as its personal residence.

7 The Declaration of Liliya Walsh is provided in support of the
8 motion. She provides testimony as to the attempts to obtain
9 possession of the property, the providing of three-day notices, and
10 commencing the unlawful detainer proceedings. She also testifies
11 to the failure of the Debtor to make full rent payments since
12 October 2010, and the failure to make any rent payments for the
13 months of September, October, and November 2011. She states that
14 the lease was terminated on January 31, 2010, and the Debtor was in
15 possession on a month-to-month lease.

16 The Motion asserts that the present bankruptcy filing is part
17 of a delay tactic connected to the Andrey Kishchenko bankruptcy
18 filing. It is asserted that the Andrey Kishchenko Chapter 13
19 filing and the present Chapter 13 filing are a coordinated effort
20 to deprive Movant of her right to possession of the property. The
21 Movant directs the court to consider the prior Chapter 7 case filed
22 by the Debtor and Andrey Kishchenko, in which both received their
23 discharge in July of 2010.

24 **OPPOSITION STATED AT THE HEARING**

25 The Debtor appeared at the hearing and asserted that the
26 Movant should not be granted relief from the automatic stay for
27 several reasons. First, she contends that the property has been
28 transferred into a trust. The Movant does not dispute that it has

1 been transferred into a trust, and asserts that Movant is the
2 beneficiary of the trust and manages the trust property.

3 The Debtor next argues that she disputed the arrangement by
4 which she and her husband were given possession of the property and
5 that they did not have to give possession back to Movant. These
6 real property and contract issues well exceed the summary scope of
7 a motion for relief and are properly the subject of the pending
8 unlawful detainer proceeding. The Debtor could not state any
9 bankruptcy issues relating to this dispute.

10 The Debtor was asked, and could not provide information to the
11 court as to what reorganization was being attempted. The only
12 answer given was that the Debtor and her husband have some tax
13 liability they need to address. The Debtor also stated that she
14 did not know what was to happen in the bankruptcy case, but she had
15 an attorney who was working on the papers. When asked the
16 attorney's name, the Debtor's response was "Dave," and she was
17 unable to provide any last name.

18 In response to the court's inquiry as to why she did not file
19 bankruptcy with her husband in November 2011, and why was his
20 bankruptcy filing and the current bankruptcy filed by her on the
21 eves of the original and reset state court unlawful detainer
22 trials, the Debtor's response was that it was because a tax debt
23 would appear on their credit report. Further, she could not
24 provide the court with any explanation as to why she and her
25 husband were filing separate cases if each of them needed to
26 reorganize.

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TWO PRIOR BANKRUPTCY CASES

Case 10-28185 Andrey Kishchenko and Lyudmila Kishchenko

Chapter 7
Case Filed: March 31, 2010
Discharge Entered: July 7, 2010
Case Closed: August 6, 2010

This Chapter 7 case was filed by the Debtor and her husband, Andrey Kishchenko. The address for the Debtor and her husband is listed as 2201 Raintree Court, Rocklin, California. The Statement of Financial Affairs list the two debtors as having \$7,040.00 in income in 2009, and \$0.00 income in 2010. Schedule J lists an expense of \$1,450.00 a month for rent or mortgage. No creditor with a secured claim is listed on Schedule D and Schedule G does not list a lease.

Case 11-47064 Andrey Kischenko

Chapter 13
Case Filed: November 11, 2011
Case Dismissed: December 5, 2011

This Chapter 13 case was filed solely by Andrey Kishchenko, the co-debtor of Lyudmila Kishchenko in the Chapter 7 case. On his bankruptcy petition, Andrey Kishchenko lists 2201 Raintree Court, Rocklin, California, as his address. On page two of the Petition, Andrey Kishchenko incorrectly states that he has not filed any prior bankruptcy case in the eight years preceding the commencement of his present case. On the Summary of Schedules, Andrey Kishchenko states that he has \$0.00 of real property assets and \$0.00 of personal property assets. Further, that he has \$0.00 of secured claims, \$0.00 of unsecured priority claims, and \$1,500.00 of unsecured non-priority claims. Schedule A attached to the petition lists 2201 Raintree Court, Rocklin, California as an

1 asset, with the value stated as "unknown." Schedule F lists one
2 creditor, named "Rental" with an address of 2201 Raintree Court,
3 Rocklin, California, having a claim in the amount of \$1,500.00. A
4 Notice of Incomplete filing was issued by the Clerk for Andrey
5 Kishchenko's failure to file a Chapter 13 Plan; Means Test;
6 Schedules B, C, D, E, G, H, I, and J; and Statement of Financial
7 Affairs.

8 The Verification of Master Mailing List filed by Andrey
9 Kishchenko lists only one person, "Rental, 2201 Raintree Court,
10 Rocklin, California 95765." Mr. Kishchenko failed to file the basic
11 pleadings necessary to prosecute a Chapter 13 case identified in
12 the Notice of Incomplete Filing and the court dismissed the case.

13 The Movant filed a motion for relief from the automatic stay
14 in Mr. Kishchenko's case. The case having been dismissed prior to
15 the hearing on the motion for relief, it was denied as moot. The
16 motion in Mr. Kishchenko's case is substantially the same as the
17 Motion filed in the Lyudmila Kishchenko case now before the court.

18 **CURRENT LYUDMILA KISHCHENKO CHAPTER 13 CASE**

19 The Petition filed in this case lists 2201 Raintree Court,
20 Rocklin, California, as the Debtor's residence. On page 2 of the
21 Petition, the Debtor incorrectly states that she and her spouse
22 have not filed any other bankruptcy cases in the eight year period
23 preceding the commencement of the instant case. Schedule A lists
24 the 2201 Raintree Court, Rocklin, California, property as an asset,
25 with the value stated as "unknown." Schedule F lists one creditor
26 holding a general unsecured claim. This creditor is stated to be
27 "Rental, 2201 Raintree Court, Rocklin, CA," with the claim listed
28 as disputed and unliquidated, in the amount of \$1,500.00. The

1 Verification of Master Mailing List filed by the Debtor lists only
2 one person, "Rental, 2201 Raintree Court, Rocklin, California
3 95765." These pleadings appear to be substantially the same as
4 those filed by Andrey Kischenko in Case No. 11-47064.

5 The Clerk issued a Notice of Incomplete Filing of documents in
6 this case, with the Debtor failing to file the Chapter 13 Plan;
7 Means Test; Schedules B, C, D, E, G, H, I, and J; and the Statement
8 of Financial Affairs. On January 5, 2012, the Debtor filed a
9 Request for Extension of Time to File and Complete Schedules. The
10 grounds stated for the extension was "Due to multiple business
11 activities, and financial issues...." No order on the motion to
12 extend was entered by the court. None of the missing documents
13 have been filed by the Debtor as of January 17, 2012.

14 The Chapter 13 Trustee has filed a statement of non-opposition
15 to the Motion for Relief From the Automatic Stay. January 6, 2012
16 docket entry. On January 13, 2012, the Chapter 13 Trustee filed a
17 Motion to Dismiss the case for failure to file documents and
18 unreasonable delay which is prejudicial to creditors.

19 **RULING**

20 Pursuant to Local Bankruptcy Rule 9014-1(f)(2), if the
21 responding party appears at the hearing and presents an opposition
22 or good cause, the court will set the matter for further hearing.
23 With respect to this motion, the Debtor has not stated an
24 opposition to the Motion. The majority of her argument would be
25 the opposition in the unlawful detainer proceeding, not a summary
26 bankruptcy motion for relief from the stay proceeding. *See Hamilton*
27 *v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P.
28 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary

1 proceedings which address issues arising only under 11 U.S.C.
2 Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing
3 *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir.
4 1985)). The court does not determine underlying issues of
5 ownership, contractual rights of parties, or issue declaratory
6 relief.

7 Additionally, when unable to respond to questions as to what
8 the Debtor, as a *pro se* litigant, was trying to accomplish through
9 the bankruptcy process, reference was made to "Dave" the attorney
10 who was working on the paperwork. No attorney has appeared for the
11 Debtor in this case.

12 No colorable opposition to the Motion has been presented by
13 the Debtor. Merely contending that the automatic stay should
14 prevent an unlawful detainer proceeding from being conducted, and
15 the state court judge properly addressing the issues of right to
16 possession of the property, does not state an opposition to the
17 Motion.

18 The automatic stay may be terminated for cause pursuant to
19 11 U.S.C. § 362(d)(1) or because there is no equity in the property
20 for the Debtor and it is not necessary to any effective
21 reorganization, 11 U.S.C. § 362(d)(2). For this Motion, both
22 grounds apply.

23 Based on the evidence provided, the court finds that Debtor
24 has no equity in the property. Once a movant under 11 U.S.C.
25 § 362(d)(2) establishes that a debtor has no equity, it is the
26 burden of the debtor to establish that the collateral at issue is
27 necessary to an effective reorganization. *United Savings Ass'n of*
28 *Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365,

1 375-76 (1988); 11 U.S.C. § 362(g)(2). However, Debtor has not
2 filed a plan or presented opposition showing that the subject
3 property is necessary to an effective reorganization. Based upon
4 the evidence submitted, the court determines that there is no
5 equity in the property for either the Debtor or the Estate.
6 11 U.S.C. § 362(d)(2).

7 To the extent Movant was seeking relief for "cause" under
8 § 362(d)(1), the court maintains the right to grant relief from
9 stay for cause when the debtor has not been diligent in carrying
10 out his or her duties in the bankruptcy case, has failed to make
11 required payments, or is using bankruptcy as a means to delay
12 payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th
13 Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).
14 Cause includes the interests of the Movant not being adequately
15 protected. Under the facts and circumstances of this motion, the
16 court further determines that Movant's interests, as the owner of
17 property under an alleged terminated lease, are not adequately
18 protected. Movant's recourse under this situation is to address
19 the issue in the state court unlawful detainer proceeding, in which
20 the Debtor can assert her rights to the extent that such relief is
21 not warranted. The court determines that cause exists for
22 terminating the automatic stay since the Debtor failed to make
23 post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R.
24 432 (B.A.P. 9th Cir. 1985).

25 **RELIEF PURSUANT TO 11 U.S.C. § 362(d)(4)**

26 While the legal basis for the relief requested was not pled
27 with the clarity of an attorney, this *pro se* Movant has asserted
28 that the multiple filing of bankruptcy cases by the Debtor and her

1 husband, Andrey Kischenko, have been part of a scheme to improperly
2 delay the state court unlawful detainer proceeding. Movant
3 expressly asserts that under the facts of the two cases, the Debtor
4 is not attempting any honest prosecution of the bankruptcy case.
5 This is a contention that the Debtor is not proceeding in good
6 faith.

7 In addition to the first two grounds for relief from the
8 automatic stay, 11 U.S.C. § 362(d)(4) provides further relief with
9 respect to the automatic stay of an act against real property when
10 the court finds that the filing of the bankruptcy petition was
11 part of a scheme to delay, hinder, and defraud creditors that
12 involved either (1) transfer of all or part of the property or (2)
13 multiple bankruptcy filings affecting such real property.

14 The unlawful detainer proceeding was filed on August 9, 2011.
15 It was amended October 20, 2011, to include the amount owed for
16 past due rents. Though the Debtor and Andrey Kischenko had
17 discharged their obligations in the 2010 Chapter 7 bankruptcy case,
18 they had fallen into default on their rent obligations. After the
19 rental arrangement was terminated and Movant concluded the month-
20 to-month rental, the Debtor and Andrey Kischenko retained
21 possession of the property.

22 On the eve of the first date set for the unlawful detainer
23 trial, Andrey Kischenko commenced his Chapter 13 case with a
24 skeletal filing. He failed to file the basic pleadings necessary,
25 and that case was dismissed. From reviewing what was filed, the
26 court cannot discern any reorganization to be undertaken.

27 Following the dismissal of the Andrey Kischenko case, the
28 unlawful detainer trial was reset for December 23, 2011. The Debtor

1 commenced the present Chapter 13 case with her skeletal filing on
2 December 21, 2011. None of the additional basic documents required
3 to prosecute a Chapter 13 case have been filed by the Debtor,
4 notwithstanding 27 days having passed since this case was
5 commenced. From the documents filed, the court cannot discern any
6 good faith reorganization being attempted in this case. Further,
7 it appears that the skeletal pleadings used for this case are
8 substantially the same as used by Andrey Kischenko in his prior
9 Chapter 13 case.

10 The court also considers that the Debtor and Andrey Kischenko
11 both incorrectly stated under penalty of perjury in their separate
12 Chapter 13 Petitions that neither they nor their spouse had
13 commenced any bankruptcy cases in the eight year period preceding
14 the commencement of their respective Chapter 13 cases. Both listed
15 their one creditor holding a general unsecured claims as "Rental,"
16 and then used their own address for that "creditor." Neither the
17 Debtor nor Andrey Kischenko listed Movant, the person who was
18 pursuing them in the state court unlawful detainer action.

19 The court finds that the filing of the present bankruptcy case
20 is one where multiple bankruptcy cases have been filed as part of
21 a scheme to delay, hinder and defraud Movant, a creditor. Upon
22 such finding, the court further orders that this order for relief
23 from the automatic stay will be binding in any subsequent
24 bankruptcy filings as to this property for a period of two years
25 from the date of the order granting relief from the stay, if this
26 order is properly recorded.

27 In granting the 11 U.S.C. § 362(d)(4) relief, the Debtor is
28 not without remedy. She may properly assert her rights and

1 defenses in the state court unlawful detainer action. Further, in
2 a subsequent bankruptcy case the judge may, based on a change in
3 circumstances or good cause shown, may grant relief from this order
4 after notice and hearing.

5 The court shall issue an order terminating and vacating the
6 automatic stay to allow Liliya Walsh, and her agents,
7 representatives and successors, to exercise her rights to obtain
8 possession and control of the real property commonly known as
9 2201 Raintree Court, Rocklin, California, including unlawful
10 detainer or other appropriate judicial proceedings and remedies to
11 obtain possession thereof.

12 The moving party has alleged adequate facts and presented
13 sufficient evidence to support the court waiving the 14-day stay of
14 enforcement required under Rule 4001(a)(3).

15 No other or additional relief is granted by the court.

16 This Memorandum Opinion and Decision constitutes the court
17 findings of fact and conclusions of law in this contested Matter.
18 Fed. R. Civ. P. 52, Fed. R. Bank. R. 9014, 7052. Because a hearing
19 on a Motion for Relief From the Automatic Stay is a summary
20 Proceeding, the findings of fact and conclusions of law made by the
21 court are limited to this Motion only, and no determination is made
22 as to the respective rights of the parties, including, without
23 limitation, the Debtor's right to occupy, possess, or deliver
24 possession of the real property, and the existence or non-existence
25 of any lease or rental agreement.

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1 The court shall enter an order granting relief from the
2 automatic stay consistent with this Decision.

3 Dated: January 17, 2012

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5 /s/ Ronald H. Sargis
6 RONALD H. SARGIS, Judge
7 United States Bankruptcy Court
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